

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

OMAR E. ROMERO-ACOSTA

Plaintiff

v.

BOTTLES, KINDRED SPIRITS INC AND
RICHARD GONSALVES

Defendant

Case No.:

Removed from Puerto Rico Court of First
Instance

Case No. GB2023-cv-00268

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, Defendant Bottles, Kindred Spirits Inc. (“KSI”) hereby removes this action from the Puerto Rico Court of First Instance, Case No. GB2023-cv-00268 (the “State Court Action”), to the United States District Court for the District of Puerto Rico. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 & 1367.

Nothing in this Notice of Removal should be interpreted as a waiver by KSI of its rights to assert any defense or affirmative matter, including without limitation a motion to dismiss pursuant to the Federal Rules of Civil Procedure, or any other challenge that may be appropriate as this case progresses. KSI does not waive and specifically reserves all objections as to service, personal jurisdiction, defenses, exceptions, rights, and motions. No statement by KSI herein or omission herefrom shall be deemed to constitute an admission by KSI to any of Plaintiff's allegations or remedies sought in the State Court Action. As grounds for removal, KSI states as follows:

1. On March 30, 2023, Plaintiff Omar E. Romero Acosta filed a Complaint (the “Complaint”) in the State Court Action against KSI. KSI received a copy of the Complaint and summons (“Summons”) on March 31, 2023.

2. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Complaint and Summons received by KSI in the State Court Action are attached hereto as **Exhibit 1**. As of the date of this filing, no other process, pleadings, or orders have been served upon KSI in the State Court Action. Upon information and belief, the Complaint is the only pleading that has been filed in the State Court Action.

3. In the Complaint, Plaintiffs claims that KSI failed to pay him the minimum wage provided in Fair Labor Standards Act ("FLSA"), particularly, the minimum wage applicable to tipped employees. See Complaint ¶¶ 6, 7, and 41. (citing 29 U.S.C §§ 203(m)(2)(a) and 206). Plaintiff also makes claims regarding Puerto Rico laws for minimum wage (the Complaint ¶ 41).

4. This Court has subject matter jurisdiction over this action and all claims asserted against KSI pursuant to its federal question jurisdiction and its supplemental jurisdiction, as Plaintiff's state law claims stem from the same nucleus of operative facts as his FLSA claim. See 28 U.S.C. §§ 1331. Because this Court has subject matter jurisdiction over this action, removal of this action to this Court is proper pursuant to 28 U.S.C. § 1441.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 119 and 1441(a) because the United States District Court for the District of Puerto Rico is the federal judicial district embracing the commonwealth of Puerto Rico, where the State Court Action was filed.

6. This Notice of Removal is timely filed in compliance with 28 U.S.C. § 1446(b) because it is filed within the thirty days after KSI received a copy of the Complaint and Summons.

7. Pursuant to 28 U.S.C. § 1446(d), KSI has filed this Notice of Removal with this Court and will serve a copy upon counsel of record for all parties and file a copy with the clerk of the court in the State Court Action.

8. No previous application has been made for the relief requested herein.

For the reasons stated above, KSI respectfully submits that it has met all requirements for this Court to exercise full jurisdiction over this matter. Therefore, KSI respectfully removes the State Court Action from the Puerto Rico Court of First Instance, to the United States District Court for the District of Puerto Rico pursuant to 28 U.S.C. §§ 1331, 1367 1441, and 1446.

RESPECTFULLY SUBMITTED, from Guaynabo, Puerto Rico, this 6th day of April 2023.

CERTIFICATE OF SERVICE: On this date, we filed the foregoing document using the Court's CM/ECF System, which will automatically serve all counsel of record with a true and faithful copy thereof. We further certify having served a true and faithful copy of this document on counsel for Plaintiff via e-mail.

s/ Joaquín Monserrate-Matienzo
Joaquín Monserrate-Matienzo
USDC-PR No. 114,501
Email: jmonserrate@msglawpr.com

s/ Miguel Simonet-Sierra
Miguel Simonet-Sierra
USDC-PR No. 210,102
Email: msimonet@msglawpr.com

**MONSERRATE SIMONET & GIERBOLINI,
LLC**
101 San Patricio Ave., Suite 1120
Guaynabo, PR 00968
Tel.: 787 620-5300
Fax: 787-620-5305